IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10161 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPAKBHAI ANANDBHAI CHAVDA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10161 of 2003

MR HARSHIT S TOLIA for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Rajkot city on

13.6.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner was declared as "dangerous person".

The grounds served upon the petitioner and placed on record reveal that the detaining authority took into consideration the fact that three offences came to be registered against the petitioner, first under sec. 392, 114 and 188 of IPC, while others two cases under sec. 379 and 114 of IPC. The offences came to be registered on 12.4.2002, 8.5.2003 and 26.5.2003. The detaining authority also took into consideration two in-camera statements recorded by sponsoring authority on 11.6.2003 as verified by the detaining authority on 12.6.2003 revealing the incidents of 20.3.2003 and 17.5.2003. From the above, the order impugned came to be passed against the petitioner.

Ld. advocate Ms. HS Tolia for the petitioner and ld. AGP Ms. Panchal for the respondents were heard at length. The affidavit in reply filed by the detaining authority as placed on record is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by the ld.AGp, from the rival contentions, it appears that this matter can be disposed of on the ground whether the privilege claimed by the detaining authority under sec. 9(2) of the PASA Act is in the breach of the rights conferred upon the petitioner under Article 22(5) of the Constitution of India. While going through the grounds, in para-3, the detaining authority reached to the subjective satisfaction that two witnesses offered their statements on promise to keep their identities undisclosed. The detaining authority has reached to the subjective satisfaction that it was not in public interest to disclose the identities of the witnesses and, therefore, the privilege claimed under sec. 9(2) of the PASA Act. These are the only observations by the detaining authority in the grounds served. The petitioner urged in this petition in para-4(e) to state that the non-supply of the names and address of the witnesses have affected the rights of the petitioner to make an effective representation as guaranteed under Article 22(5)of the Constitution of India and that the detaining authority has not made any exercise to verify the genuineness and correctness of the fear of the witnesses. The grounds is more elaborated in para-4(f) of the petition. In

addition to what is stated in the grounds placed on record, the detaining authority while filing affidavit in reply vide para-5 stated that he had carefully scrutinised, examined and considered all those materials and also personally verified the genuineness, correctness and veracity of the incidents narrated in the statements of the witnesses in the unregistered case by calling upon said witnesses to his office and from that he reached to the subjective satisfaction that the fear expressed by the witnesses was genuine. Again in para-7 of the affidavit in reply, the detaining authority stated that after carefully scrutinising and examining the material placed before him, and on personally verifying the genuineness and correctness of the unregistered cases by calling the said witnesses to his office and after satisfying him that the fear expressed and apprehension made by the witnesses were real proper, genuine and reasonable and after applying his mind to the facts of the case, the privilege under sec. 9(2) of the PASA Act was claimed.

From the above, the question arises that when the identity of the witness is not disclosed under sec. 9(2) of the PASA Act, how the detaining authority required to reach to the subjective satisfaction in this respect in public interest. The decision of this court in Bai Amina vs. State of Gujarat, as reported in 1981 GLR p. 1186 and as confirmed by the Full Bench of this court in the matter of Chandrakant N. Patel vs. State of Gujarat and ors., as reported in 1994(1) GLR p. 761, established that what is required by the detaining authority is to see that the private promise of confidentiality must yield to the general public interest that is served by communication of such particulars and materials to the detenu in order to enable him to make an effective representation against his detention. The general background, character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the informant must be inquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant, inter alia, to protect himself against the falsity of his version being exposed by an effective explanation of the detenu or to hide his own involvement or to conceal his enmity with the detenu. The detaining authority is also required to go through contemporaneous record. While going through the grounds in the case on hand, undoubtedly, no such exercise has been undertaken by the detaining authority but even after going through

the affidavit in reply also, it is not found that the back-ground, character, antecedents etc. of the detenu as well as of the witnesses were examined by the detaining authority and what contemporaneous record in this respect was relied upon by the detaining authority is also not disclosed in the grounds. Consequently, the right of the petitioner detenu to make effective representation as guaranteed under Article 22(5) of the Constitution of India is affected and further detention of the petitioner becomes bad in law. The order, therefore, impugned in this petition, is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 13.6.2003 by the Police Commissioner, Rajkot city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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